9-5-1984

State of New York Public Employment Relations Board Decisions from September 5, 1984

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from September 5, 1984

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#1A-9/5/84

GANANDA CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

CASE NO. U-7089

GANANDA TEACHERS ASSOCIATION, NEA/
NEW YORK,

Charging Party.

STANTON & VANDER BYL, ESQS. (WAYNE A. VANDER BYL, ESQ., of Counsel), for Respondent

WILLIAM R. SELL, for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the Gananda Teachers Association, NEA/New York (Association) which represents the teachers and teaching assistants employed by the Gananda Central School District (District). It alleges that the District violated §209-a.1(a) and (d) of the Taylor Law by abolishing a past practice. The past practice, which has existed since September, 1975, permitted the children of nonresident, full-time employees of the District -- not just teachers -- to attend school at the District without payment of normal tuition charges. The matter comes to us on the exceptions of the Association to the decision of an Administrative Law Judge (ALJ) dismissing the charge.

The ALJ found, and the record shows, that the practice was adopted by the District unilaterally in 1975, expanded by it

unilaterally in a way that is not here material in 1978, and unilaterally subjected to a condition since 1980. That condition, which was noted on all letters approving applications for waiver of tuition since 1980, was that no future waivers of tuition would be granted if District residents complain about them. Finally, in August, 1983, the District unilaterally terminated its practice of waiving tuition -- effective at the end of the 1983-84 school year -- because there were such complaints.

The Association argues that the ALJ erred in ruling that the District could have provided a benefit conditionally. It contends that the ALJ did not give sufficient weight to the language in Onondaga-Madison BOCES, 13 PERB ¶3015 (1980), aff'd, BOCES v. PERB, 82 AD 2d 691, 14 PERB ¶7025 (3d Dept., 1981), in which the Board said (at p. 3023) that "an employer may not unilaterally reserve to itself the right to change 'policies' which involve mandatory subjects of negotiation."

It further argues that even if the District could have unilaterally granted and then withdrawn a conditional benefit, the imposition of the condition and the withdrawal were improper. It asserts that the imposition of the condition was improper because the condition was not present when the waiver of tuition policy was adopted in 1975. It asserts that the withdrawal of the benefit was improper because the District did not give it official notification of the introduction of that condition.

The ALJ distinguished Onondaga-Madison BOCES on the ground that it dealt with an unarticulated reservation regarding the benefit it had granted while the condition imposed on the benefit granted herein was articulated in all letters approving tuition waivers since 1980. We affirm the reasoning of the ALJ.

Although it contests the District's ability to set conditions on the use of the benefit unilaterally, elsewhere in its brief the Association appears to concede the validity of such a condition,[1/] but it argues that the imposition must be set at the same time as the grant of the benefit. Assuming that there is such a limitation, the District might have committed an improper practice in 1980 when it imposed the condition, but not in 1983 when it acted on the condition, in which event the charge would not be timely.

The ALJ rejected the Association's argument that the withdrawal of the benefit was improper because it had not been notified of the imposition of the condition on the grounds that past and present officers of the Association knew of the condition as they were among the employees receiving tuition waivers; he ruled that the information known by persons holding responsible offices in the Association must be imputed to the Association itself. We affirm this finding of fact and conclusion of law.

[1/] It states in its brief to us: "If the policy had been adopted with the condition that no taxpayer complains about the practice, the Association would be precluded from arguing this case."

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: September 5, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#1B-9/5/84

In the Matter of

SAUGERTIES CENTRAL SCHOOL DISTRICT

CASE NO. E-1015

Upon the Application for Designation of Persons as Managerial or Confidential.

WHITEMAN, OSTERMAN & HANNA, ESQS. (MELVIN H. OSTERMAN, JR., ESQ. of Counsel), for Saugerties Central School District

JEFFREY R. CASSIDY, for Saugerties Federation of Employees

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Saugerties Federation of Employees (Federation) to a decision of the Director of Public Employment Practices and Representation (Director) designating Helen Ziegler and Amy Fabiano as confidential employees of the Saugerties Central School District (District) pursuant to §201.7(a) of the Taylor Law.

Ziegler and Fabiano work as clerk typists for William Knaust, the District's business manager and treasurer, who has managerial responsibilities within the meaning of §201.7(a) of the Taylor Law by virtue of performing a major role in negotiations on behalf of the District. Ziegler's primary responsibilities involve the maintenance

of the general financial records of the District. Fabiano's primary responsibilities involve keeping payroll and attendance records. Both, however, support one another.

The record shows that Ziegler is privy to information -- and indeed participates in the preparation of such information -- which would show where the District has placed funds that are available for financing employee benefits that may be granted in collective negotiations. Fabiano has access to this information but does not appear to have any significant role in preparing it. She, on the other hand, has advance information of personnel changes, including layoffs, that are contemplated by the District. Both Ziegler and Fabiano prepare financial analyses of the impact of union negotiation demands and proposals that are being contemplated by the District. Giving an example of the effect of this, the Director notes that this assignment enabled them to know that the District was contemplating changing the carrier of its health insurance plan before such a possibility was presented to the Federation.

It is on the basis of these facts that the Director issued the decision that both Ziegler and Fabiano act in a confidential capacity to Knaust, the decision to which the Federation has excepted.

The Federation's first argument in support of its

exceptions is that the Director erred in holding that Ziegler's and Fabiano's knowledge of where the District has placed monies that are available for negotiation concessions is sufficient to make them confidential employees. We conclude, however, that the Director's holding is correct. The District is not required to share this information with the Federation as its disclosure would immediately inform the Federation as to what its final offer might be.

The Federation argues that, even without disclosure of the information, by a careful analysis of the District's budget, it could discover where, and how much, money has been set aside for negotiation concessions. This may be true, but the process would be difficult and time consuming, and the results would not likely be available for the commencement of negotiations; in any event, the Federation is not entitled to have the work done for it by the District.

The Federation's second argument is that the extent to which Ziegler and Fabiano are used to compute the cost of negotiation proposals is not sufficient for their designation as confidential employees.

A line of distinction was drawn by the Director in Washingtonville CSD, 15 PERB ¶4081 (1982). There, he found Weinheim, a bookkeeper, to be confidential because

she was called upon "to cost out the District's salary and benefits proposals, both actual and potential. . .[making] her well aware of the District's likely negotiating strategem . . . ." On the other hand, he found Himelson, a payroll clerk, and Mogge, an account clerk, not to be confidential because, while they "validate figures presented by the unions during negotiations . . . [and] compile statistical information for the District's use in negotiations . . . 'they are not involved in the extrapolation of this raw material for labor relations purposes.'"(citation omitted)[1/]

The Federation asserts that the work assigned to Ziegler and Fabiano is comparable to the work assigned to Himelson and Mogge. The District asserts that the work assigned to Ziegler and Fabiano is comparable to the work assigned to Weinheim. We agree with the District.

The Federation's third argument is that the Director erred in determining that Ziegler's and Fabiano's awareness of contemplated changes in a health insurance carrier was a sufficient basis for declaring them confidential. The health insurance incident was given by the Director as an example of the kind of information to

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[1/]We affirmed the Director's decision with respect to Himelson and Mogge. 16 PERB ¶3017 (1982). His decision regarding Weinheim did not come to us.

which Ziegler and Fabiano are privy; it was not intended to stand alone as a justification for their designation as confidential. In any event, the Federation argues that it was public knowledge that health insurance costs had grown substantially and were troubling the District. While this is true, the Federation did not know, while Ziegler and Fabiano did, what the District was contemplating doing about the matter, and the District had a right to keep this information confidential.

Finally, the Federation argues that Ziegler's and, more particularly, Fabiano's advance knowledge of contemplated personnel changes is insufficient for their designation as confidential. We reject this argument. The mere contemplation of layoffs, employee reassignments and other personnel changes may have a significant impact upon the labor relations of a public employer. Moreover, while there are times when a public employer should discuss its plans with the unions representing its employees, often it need not do so. Such information is often confidential.

Having reviewed the record and considered the arguments of the parties, we affirm the decision of the Director.

NOW, THEREFORE, WE ORDER that Helen Ziegler and Amy Fabiano be, and they hereby are, designated confidential employees of the Saugerties Central School District.

DATED: September 5, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#1C-9/5/84

In the Matter of

DUTCHESS COMMUNITY COLLEGE,

Respondent,

-and-

CASE NO. U-6602

FRANCINE ROSEN,

Charging Party.

RUDOLPH P. RUSSO, ESQ., for Respondent

RICHARD B. WOLF, ESQ., for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by Francine Rosen against the Dutchess Community College (College). It alleges that the College violated §209-a.1(a), (b) and (c) of the Taylor Law in that it reduced her course load because she engaged in protected activities in seeking to improve the terms and conditions of employment of fellow teachers at the College's French School.[1/]

[1/]The French School is operated by the College pursuant to a contract with IBM Corp. to provide elementary and secondary education to the dependent children of IBM France employees who have been assigned to work for IBM in Poughkeepsie, New York. The educational program is designed to satisfy the requirements of the French Ministry of Education.

The faculty of the College proper is organized and is represented by the Dutchess United Teachers. The faculty of the French School is not organized.

The Administrative Law Judge (ALJ) dismissed the (b) allegation on the ground that there is no evidence that the College knew that the French School faculty was trying to organize.[2/] A fortiori it did not try to dominate any union or interfere with its formation. He found a possible basis for the (a) and (c) allegations in that Rosen had complained to the College leadership about terms and conditions of employment at the French School and, speaking on behalf of some fellow teachers, she had sought to improve them. However, he determined that there was merit in the College's defense that it would have cut Rosen's classes in any event because it did not wish to afford her full-time status, and she claimed such status on the ground that her hours of employment exceeded 15 a week each semester.

Rosen's hours had been split between the College proper (7-8 hours a week each semester) and the French School (15-16 hours a week each semester), and the College had informed her that it viewed these as two separate jobs. The College argued that it cut Rosen's hours because she disputed this view and repeatedly asserted that the hours she taught at each school should be added together.

[2/]The ALJ had previously dismissed the charge on the ground that we lack jurisdiction over the French School because it is not a public employer. We reversed this decision (17 PERB ¶3010 [1984]) and remanded the matter to the ALJ for a decision on the merits.

This matter now comes to the Board on Rosen's exception to the ALJ's conclusion that the College has shown that it would have cut her hours regardless of her complaints about the terms and conditions of employment of teachers at the French School.

Having reviewed the evidence, we find merit in this exception. The record shows that by the terms of the College's collective bargaining agreement with the Dutchess United Teachers, which covers the faculty of the College proper, full-time teachers include those who work 30 hours per week each year or 15 hours each semester, and perform some additional nonteaching duties. Rosen's claim of full-time status is based upon her contention that the hours of her two teaching assignments, when added together, amounted to 24 hours a week. The College's response was that the hours cannot be added as the two types of teaching assignments are of a different character and the hours of teaching criterion contemplates teaching time at the College proper only. Nevertheless, the College asserts, when Rosen kept on reiterating her claim, it cut her teaching time at the College in half in order to foreclose any possible claim.

We reject this assertion. It is inconsistent with the fact that Rosen was permitted to teach well over 15 hours per semester for the combined programs even after the cut.

Having rejected the College's explanation of its reduction of Rosen's hours, we find that it reduced them at least in part because Rosen complained about the terms and conditions of employment of teachers at the French School. Moreover, the record shows that Rosen's complaints were made with the knowledge and consent of some of the teachers at the French School after they had discussed their concerns among themselves. However, there is no indication in the record that the teachers were seeking to form an employee organization or to be represented by such an organization.

On these facts, we conclude that the College's conduct did not constitute an improper practice under the Taylor Law. The relevant provisions of §209-a.1 provide that it is an improper practice for a public employer to interfere with, restrain or coerce public employees or to discriminate against them because they seek to form, join or participate in an employee organization of their own choosing. It does so by cross-referencing to §202 of the Taylor Law which provides:

> Public employees shall have the right to form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

Inasmuch as the record does not show that Rosen or other teachers of the French School were attempting to assert §202 rights, we cannot find that the College's actions were

designed to frustrate those rights.

Rosen argues that the informal meeting of teachers to discuss concerns, and Rosen's articulation of those concerns to the College on behalf of the group, constitute an assertion of §202 rights. In support of this proposition, she cites judicial interpretations of §7 of the National Labor Relations Act and contends that these interpretations are applicable to §202 of the Taylor Law as well.

We reject this argument. In pertinent part, §7 of the National Labor Relations Act provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . . (emphasis supplied)

Many provisions of the National Labor Relations Act were incorporated into the Taylor Law by the State Legislature. Indeed, the first part of §7 was included, almost in haec verba, in §202 of the Taylor Law. We therefore conclude that the omission of language comparable to the second part of §7 evidences an intention not to afford protection to the concerted activities of employees that fall short of an attempt to form, join, participate in or refrain from forming, joining or participating in an

employee organization.[3/] This conclusion is strengthened by a comparison of the Taylor Law definition of employee organization with the NLRA definition of labor organization.[4/] The Taylor Law definition covers only actual organizations while the broader NLRA definition also covers representation committees and plans.

Finding that the Taylor Law does not protect the conduct engaged in by Rosen, we dismiss this charge.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: September 5, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

3/See City of New York, 9 PERB ¶3047 (1976).

4/Section 201.5 of the Taylor Law provides:

> The term "employee organization" means an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees . . . .

Section 2(5) of the NLRA provides:

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TONAWANDA CITY SCHOOL DISTRICT,

#1D-9/5/84

Respondent,

-and-

CASE NO. U-7187

TONAWANDA EDUCATION ASSOCIATION, NYSUT/AFT, AFL-CIO, #3056,

Charging Party.

JOHN J. PONTERIO, ESQ. for Respondent

ROBERT J. JUREWICZ, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Tonawanda City School District (District) to a decision of an Administrative Law Judge (ALJ) that it improperly transferred unit work to nonunit employees, and that it refused to negotiate the impact of the transfer. The charge, filed by Tonawanda Educaton Association, NYSUT/AFT, AFL-CIO, #3056 (Association), alleges that the District unilaterally eliminated two of four nurse/teacher (unit) positions, laying off two nurse/teachers while creating nurse (nonunit) positions and appointing five such nurses. The Association further alleges that it demanded that the District negotiate, among other things, the layoff of two nurse/teachers and the impact of the transfer of unit work to nonunit employees on the terms and conditions of employment of unit employees.

The ALJ found merit in the charge and ordered the District: 1) to restore the jobs of the laid off nurse/teachers and to make them whole; 2) to cease and desist from the assignment of unit work to nonunit employees; 3) to negotiate the impact of its decision to abolish nurse/teacher positions; and 4) to post an appropriate notice.

The District argues that the ALJ erred in finding that it violated its duty to negotiate the impact of the change of employee assignments in that the Association had made no demand to negotiate impact but only to negotiate the change itself, and that the change took place in mid-contract term and the Association had waived its right to all mid-term negotiations, including impact negotiations. We affirm this part of the ALJ's decision. The language of the Associaton's negotiation proposal clearly demands negotiations regarding the impact of the change. There were, of course, no specific impact proposals but, as noted by the ALJ, the District denied the demand without asking for or awaiting specific proposals. We also find no merit in the District's waiver argument. The contract provision cited by the District contains two paragraphs. The first precludes mid-term negotiations regarding any matter covered by the parties collective bargaining agreement. For matters not covered by the agreement -- and the agreement does not deal with the impact of unilateral changes -- it precludes mid-term negotiations "except in cases as required by applicable

law." Absent a clear waiver, such impact negotiations are required by the Taylor Law.[1/]

The District next argues that the ALJ erred in finding that the jobs of the nurse/teachers and of the nurses were substantially the same, which was the basis of her conclusion that the nurses were given unit work.[2/]

In considering whether the District assigned the unit work of nurse/teachers to nurses, we note the position of the District that the nurse/teachers' work is divided into three categories: 1) classroom teaching; 2) "other teaching" which, according to a District witness, consists of "any instruction given by the school nurse-teacher to groups of two or more students, teachers, administrators or parents"; and 3) one-to-one teaching, also referred to as "health counseling".

It is conceded by the Association that the nurses have not engaged in classroom teaching, such work being limited to nurse/teachers. The record shows, however, that, notwithstanding job descriptions which limited "other teaching" and "health counseling" to nurse/teachers, such work was performed by nurses as well. The District's own witnesses and

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[1/] City of Watertown, 10 PERB ¶3008 (1977).

[2/] Related to this argument, the District contends that the ALJ erred in not granting its motions to dismiss the charge after a presentation of the Association's evidence and after the hearing was completed.

its documentary evidence establish that it considered such work to be reserved exclusively for nurse/teachers. Accordingly, we find it to be unit work, the assignment of which to nonunit employees violates the Taylor Law.[4/]

Finally,[5/] the District argues that the ALJ erred in ruling that it had failed to show that the transfer of the unit work was motivated by a compelling need related to the performance of its mission. It asserts that the test applied by the ALJ is an inappropriate one, it being sufficient that the change relates to the level of services that it chooses to provide to its constituency. Thus, according to the District, evidence of a compelling need is irrelevant.

4/Northport UFSD, 9 PERB ¶3003 (1976). Cf. East Ramapo CSD, 10 PERB ¶3064 (1977). There, we dismissed an improper practice charge because the functions assigned to the nonunit position "were merely incidental to the primary, but eliminated, work "of the unit position". (at p. 3113).

Also, Cf. North Shore UFSD, 11 PERB ¶3011 (1978). There, we found no violation when the District abolished the unit position of nurse/teacher and assigned the duties performed by the nurse/teachers -- except for classroom teaching -- to a newly created position of nurse. We made no finding there, as we do here, that other assignments given to the nurses had constituted unit work.

5/The District also argues that, insofar as the charge complained about the creation of the nurse position, the ALJ erred in not dismissing it as being untimely, the position having been created more than four months before the charge was filed. This argument is irrelevant The ALJ did not find a violation by reason of the District's creation of the new position. Rather, she found that the transfer of unit work to that position was improper.

This argument has no bearing upon the basis of our decision. There is no indication in the record that the District has curtailed any service to its constituency. Whatever classroom teaching was done in the past by the four nurse/teachers could have been and was probably absorbed by the remaining two. There was also no showing of any diminution of "other teaching" or "health counseling". Part of this unit work was merely assigned to nonunit employees.

NOW, THEREFORE, WE ORDER the District to:

1. Offer to reinstate the two laid off school nurse/teachers under their prior terms and conditions of employment and make them whole for any loss of wages or benefits sustained as the result of their termination, with interest at the legal rate;
2. Negotiate in good faith with the Association, upon demand, the impact of its decision to abolish the school nurse/teacher positions.
3. Cease and desist from the assignment of unit work to nonunit employees.

4. Post the attached notice at all places normally used to communicate with unit employees.

DATED: September 5, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify employees within the unit represented by the Tonawanda Education Association, NYSUT/AFT/AFL-CIO, #3056, that the Tonawanda City School District will:

1. Offer to reinstate the two laid off school nurse/teachers under their prior terms and conditions of employment and make them whole for any loss of wages or benefits sustained as the result of their termination, with interest at the legal rate.

2. Negotiate in good faith with the Association, upon demand, the impact of its decision to abolish the school nurse/teacher positions.

3. Not assign unit work to nonunit employees.

Tonawanda City School District

Dated..... **By**.....
(Representative) **(Title)**

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

9267

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#1E-9/5/84

TOWN OF DRESDEN,

Respondent,

-and-

CASE NO. U-7383

TEAMSTERS LOCAL 294, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA,

Charging Party.

WILLIAM L. NIKAS, ESQ. for Respondent

POZEFSKY, POZEFSKY & BRAMLEY, ESQS. (BRUCE C. BRAMLEY, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to the Board on the exceptions of the Town of Dresden to the decision of the Administrative Law Judge (ALJ) determining that the Town violated Section 209-a.1(d) of the Act when the Town Supervisor failed to execute a collective bargaining agreement after having agreed to the terms contained therein. The ALJ sustained the charge filed by Teamsters Local 294 (Union) and directed the Town Supervisor to execute the contract submitted by the Union for ratification in January of 1984 (Union Exhibit 7).

The Town's position at the hearing and in its exceptions is that the Supervisor lacked authority to reach final agreement without its prior ratification by the Town Board. The ALJ determined that any limitation on the authority of the Supervisor to negotiate and agree was not clearly communicated to the Union. In its exceptions the Town asserts that the Supervisor did not have authority to bind the Town Board and that the Union representative was aware that the Town Board reserved the right to approve the contract. While it is conceded that no explicit communication to that effect was given, the Town asserts that the evidence establishes that it was clear enough that the negotiations were conducted with the "ground rule" that the Town Board reserved the right to ratify the agreement.

FACTS

The Union was certified as the representative of the highway department employees of the Town on January 28, 1983. It demanded negotiations but none were held until July 29, 1983, at which time the Union negotiator, Campbell, met with the Town Attorney, Nikas, to discuss a proposed draft contract submitted by Campbell. Sometime in October, 1983, Campbell met with the Town Supervisor, Rota. Campbell testified that at that meeting he and Rota reviewed the issues still outstanding, and that Rota agreed that Nikas

would finalize the contract, draw it up, and Rota would sign it. Rota testified that at the end of this meeting with Campbell, he said that he will "take this back to the Board and see what the Board feels about it."

On January 11, 1984, Nikas mailed Campbell a contract which was a revision of the original union contract, including a substantially different wage schedule. The letter accompanying this contact indicated Rota's position with regard to wages. The letter offers two alternative compromises. Campbell testified that he spoke to Nikas on the phone about the wage issue and then took the matter to the employees who ratified one of the alternatives. Campbell returned the contract to Nikas for Rota's signature.

On February 7, 1984, Nikas returned the contract to Campbell unsigned and with many changes. In his letter he states that a "majority vote" could not be obtained "without various amendments." It appears that after the January contract was mailed to Campbell, Rota met with the Town Board.

DISCUSSION

The exceptions filed on behalf of the Town indicate a misunderstanding of the respective legal responsibilities of the chief executive officer and the legislative body of a public employer regarding negotiations under the Taylor Law. The chief executive officer--in this case, the Supervisor--is

responsible for representing the municipality in negotiating contracts. The Act contemplates that negotiations will be an executive, not a legislative, process (§§201.12, 204-a; City of Kingston v. PERB, 16 PERB ¶7002 (Sup. Ct., Alb. Co. 1983); see CSEA v. Helsby, 21 NY2d 541, 547, 1 PERB ¶702, at p. 7008 [1968]). The Act specifically defines an agreement as an exchange of mutual promises between the chief executive officer and an employee organization "which becomes a binding contract" except as to any provisions which require approval by the legislative body (§§201.12, 204-a).

There is an important difference between the legislative body's statutory responsibility to review an executed agreement and the power to "ratify" the entire agreement prior to execution. We have previously held that a legislative body may not unilaterally reserve to itself the authority to ratify the entire agreement (Falconer Central School District, 6 PERB ¶3029 [1973]; Jamestown Teachers Association, 6 PERB ¶3075 [1973]). On the other hand, we have recognized the right of the parties to agree that their negotiations will be subject to the right of the legislative body to ratify the entire agreement (Glen Cove City School District, 6 PERB ¶3004 [1973]). Where the legislative body directly assumes negotiation responsibility with the acquiescence of the chief executive officer and the employee organization and holds itself out as having the authority to negotiate an agreement, its promises will be binding on the

public employer. The members of the legislative body that negotiated the agreement may not repudiate it by claiming a different capacity as legislators (Sylvan-Verona Beach Common School District, 15 PERB ¶3067 [1982]).

As to those aspects of an agreement requiring legislative approval, there is no requirement that the parties be aware of any reservation of right on the part of the legislative body. Such right inheres in the legislative body by virtue of the statute. As to other matters, the chief executive officer is clothed by the statute with authority to bind the public employer. If the chief executive officer and the legislative body agree that the legislative body will be responsible for the negotiation process, then it is essential that the employee organization agree beforehand to such a fundamental "ground rule." While such agreement may conceivably be evidenced by a course of conduct, it must be clear that the employee organization was made fully and explicitly aware of such "ground rule" and acquiesced in it.

The evidence in this record does not support a finding that the Union agreed to any such ground rule. Neither the Supervisor nor the Town Attorney testified to any explicit statement that the Town Board would participate in the negotiation process, as distinguished from its statutory role to review an executed agreement. Consequently, the Union

representative could properly believe that negotiations would take place on the basis of the respective statutory responsibilities of the Supervisor and the Town Board.

One other issue remains for consideration. That is whether the Supervisor reached a "meeting of the minds" with the Union representative regarding the contract. Having reviewed the record, we conclude that the evidence supports the finding that Campbell and Rota reached an agreement at their meeting in October, which agreement was evidenced by the contract sent to Campbell on January 11, 1984. It would appear that the only issue raised by Rota at this point involved wages. Nikas' letter of that date can properly be construed as a counteroffer which was subsequently accepted by the Union membership. We conclude, therefore, that an agreement was reached between the chief executive officer and the employee organization.

CONCLUSION

We find that the Town violated §209-a.1(d) of the Act by reason of the Town Supervisor's refusal to execute the contract.

ACCORDINGLY, WE ORDER that:

1. The Town Supervisor execute the contract submitted by the union for ratification in January of 1984 (Union

Exhibit 7);[1/]

2. The Town of Dresden negotiate in good faith with Teamsters Local 294 concerning terms and conditions of employment for employees represented by said Union; and

3. The Town of Dresden post the attached notice at all locations normally used for communications to unit employees.

DATED: September 5, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

[1/]This order does not foreclose the Town Board from the exercise of its proper legislative function insofar as it relates to those matters requiring, by statute, legislative approval before they may be binding upon the Town. (§§201.12, 204-a)

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees in the unit represented by the Teamsters Local 294, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, that the Town of Dresden will:

1. By its Town Supervisor, execute the contract agreed to by the Town Supervisor and submitted to the Union for ratification in January of 1984; and

2. Negotiate in good faith with the Teamsters Local 294, concerning the terms and conditions of employment for employees represented by the Union.

Town of Dresden

Dated..... **By**.....
(Representative) **(Title)**

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#1F-9/5/84

In the Matter of

BEACON CITY SCHOOL DISTRICT,

Respondent,

-and-

CASE NO. U-7030

BEACON TEACHERS ASSOCIATION, NEA/NY,

Charging Party.

THOMAS HALLEY, ESQ., for Respondent

JOSEPH DiVINCENZO, for Charging Party

BOARD DECISION AND ORDER

This matter comes to the Board on the exceptions of the Beacon Teachers Association, NEA/NY (Association) to the decision of the Administrative Law Judge (ALJ) dismissing its charge against the Beacon City School District (District). The Association's charge alleges that the District violated §209-a.1(d) of the Act by unilaterally increasing the length of the 1982-83 work year by one day to 182 actual teacher work days.

The ALJ found that the District's promulgated school calendar for the year in question and the prior four years contained either 185 or 183 teacher work days, and that the teachers actually worked 180 days in 1979-80 and 1981-82 and 181 days in 1980-81. The ALJ further found that any

difference between the promulgated calendar work days and the days actually worked was the result of "emergency days" when the District closed the schools due to inclement weather or other unusual circumstances. The ALJ found no evidence that the 182 days the teachers actually worked in 1982-83 resulted from any change in that practice.

In its exceptions, the Association asserts that the evidence supports the conclusion that the practice of the District had been to limit the actual work days to no more than 181 days and that the District unilaterally added one day to the work year in the 1982-83 school year.

Having reviewed the record and considered the contentions of the Association, we affirm the findings of fact and conclusions of law of the ALJ.

ACCORDINGLY, WE ORDER that the charge herein be, and it hereby is, dismissed in its entirety.

DATED: September 5, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2A-9/5/84

GREENVILLE CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2710

GREENVILLE CUSTODIAN-DRIVERS ASSOCIATION, NYSUT,

Petitioner,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Greenville Custodian-Drivers Association, NYSUT has been designated and selected by a majority of the employees of the above named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Custodian, Cleaner, Mechanic, Head Mechanic, Custodial Repairman, Cleaner/Monitor and Bus Driver.

Excluded: Assistant Buildings and Grounds Supervisor, Transportation Supervisor and other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Greenville Custodian-Drivers Association, NYSUT and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: September 5, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member